IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

OP.No. 2353 of 2003(E)

PETITIONERS:

1. **A.P.VIJAYAPPAN, EXCISE GUARD, EXCISE CIRCLE OFFICE, PALA, KOTTAYAM DISTRICT.**
2. **V.T.PETER, EXCISE GUARD, EXCISE RANGE OFFICE, VAIKOM, KOTTAYAM DISTRICT.**

BY ADV. SRI.P.RAVINDRAN

RESPONDENTS:

1. **EXCISE COMMISSIONER, COMMISSIONERATE OF EXCISE, THIRUVANANTHAPURAM.**
2. **JOINT EXCISE COMMISSIONER, COMMISSIONERATE OF EXCISE, THIRUVANANTHAPURAM.**
3. **ASSISTANT EXCISE COMMISSIONER EXCISE DIVISION OFFICE, KOTTAYAM.**
4. **V.JAYAN K., EXCISE PREVENTIVE OFFICER, O/O ASST.EXCISE COMMISSIONER, KOTTAYAM.**
5. **REGHUNATHAN ACHARI T., EXCISE PREVENTIVE OFFICER, O/O ASST.EXCISE COMMISSIONER KOTTAYAM.**
6. **SHAJI KUMAR K.S., EXCISE PREVENTIVE OFFICER, O/O ASST.EXCISE COMMISSIOER, KOTTAYAM.**
7. **KRISHNADASAN POTTI N., EXCISE PREVENTIVE OFFICER O/O ASST.EXCISE COMMISSIONER, KOTTAYAM.**
8. **SANKAR B.A., EXCISE PREVENTIVE OFFICER, O/O ASST.EXCISE COMMISSIONER, KOTTAYAM.**
9. **SATHEESH P.K., EXCISE PREVENTIVE OFFICER O/O ASST.EXCISE COMMISSIONER, KOTTAYAM.**
10. **REGHU P.K., EXCISE PREVENTIVE OFFICER, O/O ASST.EXCISE COMMISSIONER, KOTTAYAM.**

BY GOVERNMENT PLEADER SRI. MANOJ KUMAR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 28/02/2007, ALONG WITH OP NO. 549 OF 2003 AND CONNECTED CASES THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH, J.

O.P.Nos.2353 & 549 of 2003, W.P.(C) Nos.21232, 12552, 11666, 12340, 12609, 13177, 14626, 15266, 15498, 16785, 30956 & 30867 of 2006

Dated 28th February, 2007.

J U D G M E N T

The issue raised in all these writ petitions pertains to the dispute on the seniority between the promotees and direct recruits in the cadre of Preventive Officers in the Excise Department. The Exhibits referred to in this judgment are as appearing in W.P.(C) No.14626/06. Though the subject matter has a chequered history, in the nature of the order I propose to pass, I do not think it necessary to refer extensively to the same. Suffice to note that, in implementation of the common judgment dated 18.7.2000 (Ext.P1) in W.A.994/99 and connected cases, Government initially passed Ext.P4 order dated 4.4.2003. The Division Bench of this Court found that the order was not in proper compliance with the judgment, and hence the Government issued Ext.P6 order dated 14.10.2003 ordering that ”excess directly recruited Preventive Officers in the Excise Department will be treated as holding supernumerary post till the respective dates of accommodating them in the subsequent vacancies strictly adhering to the cadre strength.” Since they were thus

accommodated against supernumerary posts in order to avoid retrenchment while publishing the seniority list, they were not granted the benefit of date of advice. Instead, they were granted only the respective positions, after accommodating the promotees against their 25% reserved quota. While so, three such direct recruits, after more than a year of Ext.P6 Government Order filed W.P.(C) No.24002/05, leading to Ext.P10 judgment. It is significant to note that none of the affected parties was impleaded on the party array. It appears, the writ petition was disposed of at the admission stage itself, directing the Government to dispose of the representation, Ext.P3 in that writ petition, within a period of one month from the date of receipt of a copy of the judgment. The relief sought in that Ext.P3 was to virtually reconsider Ext.P6 Government Order dated 14.10.2003. In purported compliance with the said judgment Government passed the impugned Ext.P11 order dated 4.4.2006, ordering that the excess direct recruits will be entitled to seniority from the date of their advice.

2. Sri.K.R.B.Kaimal, learned senior counsel appearing for the petitioners in W.P.(C) No.15498/2006 submits that the issue having been given a quietus as per Ext.P6 Government

Order dated 14.10.2003, the Government should not have taken a contrary stand, while disposing of a representation as directed in Ext.P10 judgment. It is submitted that the contempt case filed for not complying with Ext.P1 judgment was closed only after passing Ext.P6 order holding that there was proper compliance with Ext.P1 judgment. However, without referring to any of these aspects and without notice to the affected parties, the impugned order is passed in naked violation of the principles of natural justice, it is submitted. Various other contentions are also taken on the legal position as well.

3. Sri.O.V.Radhakrishnan, learned senior counsel appearing for some of the party respondents fairly conceded that the order is one passed in violation of the principles of natural justice and that none of the affected parties was heard while taking a contrary view, upsetting the earlier stand taken by the Government before this Court and in the Government Order. It is not disputed that not even the parties to the writ petitions who were the beneficiaries of Ext.P6 were given an opportunity while passing the impugned Ext.P11 order. However, several other contentions have also been addressed on merits, attempting to sustain Ext.P11 order.

4. Sri.Aravindakshan Pillai, supporting the senior counsel Sri.O.V.Radhakrishnan, additionally submits that for the purpose of seniority, date of advice by the Public Service Commission is the norm to be followed and that position is settled by various decisions of this Court, including the one in W.A.448/97. Learned counsel for the petitioners submit that though the date of advice by the Public Service Commission is the norm to be followed for the purpose of seniority ordinarily, once a quota rule is to be followed, the seniority has to be fixed respecting the quota and in case there is accommodation of any group in excess of the quota, they cannot be given the benefit of seniority above the appointees against the eligible quota. It is also submitted that Ext.P6 order is passed in compliance with Ext.P1 judgment referred to above and that judgment having become final, the Government cannot take a contrary view so long as the judgment is not otherwise avoided in any process known to law. Referring to the above contention, learned counsel appearing for the respondents however submit that Ext.P1 judgment has not dealt with the seniority, it has only dealt with the accommodation of the promotees and direct recruits against their respective quota. The contention of the petitioners is that

the seniority is only consequential to the placement in terms of the Government Order passed as directed in Ext.P1 judgment.

5. Having regard to the various contentions advanced by the parties, and on going through the impugned Ext.P11 order, it is fairly clear that the Government has not applied its mind properly to the implications of the order in the background of the contentions advanced by the parties. Since I propose to remit the matter to the Government, it will not be proper for this Court to express any opinion on the merits of the contentions since both sides have addressed several contentions, many of which I have not referred to in the judgment. In any case, the Government should not have passed Ext.P11 order behind the back of the beneficiaries of Ext.P6 order. In that view of the matter, I set aside Ext.P11 order and remit the matter to the Government with a direction to consider Ext.P3 representation referred to in Ext.P10 judgment afresh with notice to all the parties to these writ petitions since all the affected parties have been impleaded in a representative capacity. This shall be done within a period of four months from the date of production/receipt of a copy of the judgment by either side. It is made clear that I have not expressed any opinion on the merits of the case and it is for the

Government to consider the issue, adverting to the contentions taken by the respective parties. Further proceedings based on and pursuant to Ext.P11 will be deferred till the Government takes a decision as above.

The writ petitions are disposed of as above.

KURIAN JOSEPH, JUDGE.

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KURIAN JOSEPH, J

O.P.No. of 2002

J U D G M E N T

Dated 28th February, 2007.